IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 292 OF 1986

Hasan Abraham Dakhani ...Appellant

Vs.

1. Manohar Balaram Tawasalkar

2. Prabhakar Shankar Karandekar
(since deceased by his heirs)
2-A Smt.Sulochana Prabhakar Karandekar
2-B Savita D/o. Prabhakar Karandekar
2-C Sandesh S/o Prabhakar Karandekar

3. Sadanand Shankar Karandekar ...Respondents

Shri A.A.Kumbhakoni for the Appellant
Shri M.B.Baadkar for the Respondents.

CORAM: ABHAY S.OKA,J.

DATE OF HEARING OF LAST ARGUMENTS:SEPTEMBER 3, 2004.

DATE OF PRONOUNCEMENT OF JUDGMENT:21ST OCTOBER,2004.

JUDGMENT :

1. On 18th July 1986 this Second Appeal was admitted by

passing following order :

. Admit.

. The agreement Exh.72 is held to be valid and genuine. If so, it must be held to be binding upon the Deft.No.1 who, in view of the fact that the Plaintiff was admittedly in possession of the land in question on the date of the agreement Exh.72, was having notice of the agreement. Deft.No.1's sale deed Exh.42 is, therefore, of no

legal efficacy vis-a-vis the Plaintiff. This is a substantial question of law.

2. The Appeal is by the original Plaintiff. The dispute relates to the land bearing survey No.13 Hissa No.4 admeasuring three and one half gunthas (hereinafter referred to as the said land) situated at Murud, Taluka Murud, District Raigad. Admittedly, the said land is owned by the Respondent Nos.2 and 3 who are the original Defendant Nos. 2 and 3. The case of the Appellant-Plaintiff is that there was a old dilapidated house of the Respondent Nos.2 and 3 on the said land. The Appellant was desirous of starting a factory and workshop and therefore in the year 1963 the Appellant requested the Respondent No.3 to let out the said land. At that time the Respondent No.2 was a minor. Therefore, the Respondent No.3 was looking after the said land. Accordingly, an agreement was executed on 13th June 1963 by the Respondent No.3 in favour of the Appellant which is described by the Appellant as an agreement of tenancy. According to the Appellant the Respondent No.3 agreed to let out the said land for a period of 10 years at the rate of Rs.60/- p.a. As per the terms and conditions of the said agreement, the Respondent Nos.2 and 3 removed their old house and the Appellant constructed a new house on the said land by spending a sum of Rs.5,000/-. The case of the Appellant is that the agreement of tenancy came into force on 18th March 1964 when the construction work was completed.

3. According to the Appellant some time in March 1971 the Respondent No.2 approached him and represented that a part of the said land having area of 1-3/4th Gunthas consisting of land below the house constructed by the Appellant and abutting open land adjacent to sea has been allowed to his share. The Respondent No.2 stated that was desirous of selling his share. Therefore, the Appellant agreed to purchase the share of the Respondent No.2 at the price of Rs.2500/- and on 17th March 1971 the Respondent No.2 executed an Agreement for sale in favour of the Appellant by accepting Rs.500/- as earnest money. The Respondent No.2 executed a Sale Deed dated 8th September 1973 in favour of the Appellant in respect of one half share in the said land. According to the Appellant entire balance consideration was paid by him to the Respondent No.2 at the time of registration of the Sale Deed. The sale deed refers to one half share of the Respondent No.2 in the well being granted in favour of the Appellant.

4. According to the Appellant, the Respondent No.1-Defendant No.1 entered the said land and filled up the well by dumping sand in the the same. Subsequently, the Appellant came to know that the Respondent Nos.2 and 3 have sold the said land described in paragraph No.1 of the plaint to the Respondent No.1 by registered sale deed dated 15th December 1971. A suit was filed by the Appellant inter-alia for declaration

that he has become owner of the one half share of the land and he continues to be the tenant of the remaining one half portion of the suit land. He also claimed declaration that the Sale Deed dated 15th December 1971 executed by the Respondent Nos.2 and 3 in favour of the Respondent No.1 was not binding on him and that the possession taken by the Respondent No.1 of palm trees in the suit land was illegal and the Appellant prayed for possession of the area of the said land where trees were planted.

5. The suit was contested by the Respondent No.1. The Respondent No.1 contended that the agreement of tenancy dated 13th June 1963 allegedly executed by the Respondent No.3 in favour of the Appellant was not duly registered and therefore the same cannot be read in evidence. He denied that the Appellant became a tenant of the said land. He denied the existence of sale transaction between the Respondent No.2 and the Appellant. He submitted that in fact there was no partition between the Respondent Nos.2 and 3. He submitted that on 15th December 1971, by virtue of registered sale deed executed in his favour by the Respondent Nos.2 and 3, he became owner of the said land. The contention raised by the Respondent No.1 that the Agreement dated 17th March 1971 has been created by the Appellant with a view to defeat the rights of the Respondent No.1. He submitted that in any event, he was not aware about the Agreement dated 17th March 1971 and the transaction between the Appellant and the

Respondent No.2. A contention was raised that the sale deed dated 8th September 1973 executed by the Respondent No.2 in favour of the Appellant is inoperative as on 15th December 1971 the Respondent Nos.2 and 3 had sold the entire land to the Respondent No.1 by a registered sale deed.

6. The Respondent No.2 filed a separate written statement. A contention was raised that the Appellant must have obtained signature of the Respondent No.2 on the Agreement dated 17th March 1971 by deceiving him and no consideration has been paid by the Appellant to the Respondent No.2 under the sale deed dated 25th September 1973. The sale deed was got executed by the Appellant from the Respondent No.2 by pressurising him.

7. The Defendant No.3 did not file any written statement. The suit was therefore ordered to be heard exparte against the Respondent No.3.

8. The Trial Court decreed the suit. The Trial Court held that the Appellant has become owner of the one half portion of the said land on the basis of sale deed executed by the Respondent No.2 and that the Appellant was the tenant in respect of the rest of the property. An Appeal was preferred by the Respondent No.1 against the Decree of the Trial Court before the District Court. By Judgment and Decree dated 23rd October 1981 the learned Assistant Judge, Raigad allowed the

said Appeal and dismissed the suit filed by the Appellant. The learned Assistant Judge held that the agreement of tenancy is the "executed document". The learned Judge held that the relationship of the Landlords and the tenant was created between the Respondent Nos.2 and 3 on one hand and the Appellant on the other hand by the document dated 13th June 1963. The learned Judge, however, held that the said document required compulsory registration in view of Section 17 of Indian Registration Act,1908 and for want of registration the said document was invalid. The learned Judge recorded a finding that only house No.123/41 and land below it was leased out under the said document and the coconut garden and well was not let out. The learned Assistant Judge held that the Appellant has not acquired any title to the one half portion of the said land subject matter of sale deed dated 8th September 1973 executed by the Respondent No.2 in favour of the Appellant. The learned Judge accepted the case made out by the Respondent No.1 that the entire land was sold to him by the Respondent Nos.2 and 3 under the registered sale deed dated 15th December 1971. Lastly, the learned Judge held that the agreement dated 17th March 1971 (Exh.72) was established by the Appellant. The learned Judge however held that by sale deed dated 15th December 1971 the Respondent Nos.2 and 3 have become owners of the said land. The challenge in this Second Appeal is to the Judgment and Decree passed by the Appellate Court.

9. Shri A.A.Kumbhakoni the learned Counsel appearing for the Appellant submitted that agreement dated 17th March 1971 (Exh.72) was binding on the Respondent No.1 who is claiming through the Respondent No.2. He submitted that when the Appellant was in possession of the said land and the structure thereon, the Respondent No.1 ought to have made enquiry as to how the Appellant was in possession. As such enquiry is admittedly not made by the Respondent No.1, it will have to be presumed that the Respondent No.1 had constructive notice of equitable right created in favour of the Appellant by virtue of agreement at Exh.72. He submitted that the subsequent conveyance dated 15th December 1971 executed by the Respondent Nos.2 and 3 is naturally subject to the rights created in favour of the Appellant by virtue of agreement at Exh.72. He submitted that the agreement at Exh.72 can be enforced by the Appellant as against the Respondent No.1 and therefore the sale deed executed in favour of the Respondent No.1 did not confer on him any right or title in respect of the said land. He submitted that in any event the sale deed executed by the Respondent Nos.2 and 3 in favour of the Respondent No.1 will not bind the Appellant in so far as the share of the Respondent No.2 is concerned.

10. Shri Kumbhakoni further submitted that the document of lease at Exh.68 was executory in nature and it is not an executed document. He submitted that the lease in favour of

the Appellant is not created by the document itself but document merely records that a lease will be granted for a period of 10 years in favour of the Appellant from the date of completion of the construction. He submitted that the said document did not require compulsory registration either under Section 107 of the Transfer of Property Act, 1882 (hereinafter referred to as said Act of 1882) or under Section 17 of Indian Registration Act, 1908 (hereinafter referred to as the said Act of 1908). He submitted that the document at Exh.68 was admissible in the evidence and the same ought to have been read in evidence by the Court below.

11. Shri Kumbhakoni further urged that even assuming that the document was not admissible in evidence, it was an admitted position that the Respondent Nos.2 and 3 accepted the rent from the Appellant vide rent receipts at Exh.39 and 40. Therefore, the case of the Appellant is that he was a tenant in respect of the said land and this fact ought to have accepted by the Appellate Court. He submitted that the sale deed executed by the Respondent Nos.2 and 3 in favour of the Respondent No.1 will not have result of defeating the tenancy right of the Appellant. Notwithstanding the said sale deed the Appellant will be entitled to occupy the said land as a tenant.

12. Shri Kumbhakoni also criticised the finding of the Appellate Court by which it was held that there was no

partition between the Respondent Nos.2 and 3. He submitted that even assuming that there was no partition, the Appellant has become owner of the one half share of the Respondent No.2. He submitted that the sale deed executed on 8th September 1973 by the Respondent No.2 in favour of the Appellant will be binding on the Respondent No.1 as the sale deed is based on the agreement dated 17th March 1971 (Exh.72). He submitted that the sale deed executed by the Respondent Nos.2 and 3 on 15th December 1971 in favour of the Respondent No.1 will not binding the Appellant in so far as the one half share of the Respondent No.2 is concerned as the Respondent No.1 is not a bonafide purchaser. Shri Kumbhakoni appearing for the Appellant has relied upon several decisions of the Apex Court, this Court and a decision of the Delhi High Court in support of his contentions. Reference to the same will be made later on.

13. Shri Baadkar appearing for the Respondent No.1 submitted that the findings recorded by the Appellate Court are the findings of fact which are based on oral and documentary evidence on record. He submitted that the Appellate Court is the final court of fact and therefore the said finding of fact cannot be interfered with in the Second Appeal under Section 100 of Code of Civil Procedure, 1908 (hereinafter referred to as the said Code). The learned Counsel submitted that the Appellant has not filed any suit for specific performance of agreement of sale Exh.72. He submitted that

the said agreement does not create any interest in the said land in favour of the Appellant. He submitted that after execution of the sale deed dated 15th December 1971 the Respondent No.2 ceased to have any right, title or interest in respect of the said land and he could not have executed the sale deed in favour of the Appellant in the year 1973. He submitted that there is no plea in the plaint that the Appellant was claiming tenancy on the basis of the Rent Receipts alleged executed by the Respondent No.2. He submitted that the document at Exh.68 itself purports to create a lease and was therefore compulsorily registrable document. He, therefore, submitted that no interference was required.

14. I have carefully considered the rival submissions. I have also perused the pleadings and exhibited documents on record of the suit.

15. The only substantial question of law framed by this Court is based on the contention that the Respondent No.1 is bound by the agreement dated 17th March 1971 and therefore, the sale deed executed in favour of the Respondent No.1 subsequently has no legal efficacy. Shri Kumbhakoni the learned Counsel for the Appellant has made submissions on the other issues. Though the Second Appeal will have to be heard only on the substantial question of law which is framed, I have nevertheless considered the other submissions made by

Shri Kumbhakoni considering the fact that it is a very old Second Appeal numbered in the year 1986 which was filed in the year 1982.

16. The agreement dated 17th March 1971 at Exh.72 is executed by the Respondent No.2 in favour of the Appellant who was having one half share in the said land. Section 54 of the said Act of 1882 provides that agreement for sale does not create any interest in the property subject matter of such agreement. The right, title or interest of the vendor is transferred in favour of the purchaser only after a conveyance is executed by the vendor in favour of the purchaser. The agreement for sale of immovable property at the most creates equitable right in favour of the purchaser to obtain a conveyance from the vendor.

17. Shri Kumbhakoni relied upon the judgment of Division Bench of this Court reported in A.I.R. 1921 Bombay page No.459 (Faki Gulam V. Faki Gulam Mohidin). Shri Kumbhakoni relied upon the following observations made by Macleod, C.J.:

> . "The result, therefore, must be that the 2nd defendant having knowledge of the plaintiff being in possession, and having made no inquiry why the plaintiff was in possession, must be taken to have had constructive notice of all the equities in favour of the plaintiff. It would have been a different matter if he had made inquiries and had been told that the plaintiff was only in possession as mortgagee, but if he chooses to make no inquiries at all, then he is liable to all the risks that might result from the

discovery that the person against the vendor..."

. He also relied upon the following observation made by Fawcett J. in his concurring Judgment:

. Fawcett,J.:- I concur. I would also refer to the 3rd illustration to clause (b) of section 27 of the Specific Relief Act which authoritatively declares the law in accordance with the case of Daniels Vs.Davison (2).

. "A contracts to sell land to B for Rs.5000/-. B takes possession of the land. Afterwards A sells it to C for Rs.6000/- C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C."

. Therefore the lower Courts were not justified in making the distinction upon which they dismissed the plaintiff's suit.

18. The said decision of this Court in case of Faki Ibrahim A.I.R. 1921 Bombay 459 was rendered in the Second Appeal arising out of a suit for specific performance filed by the Appellant-Plaintiff. The agreement for sale was dated 4th March 1917 executed in favour of the Appellant/Plaintiff by the Respondent No.1/Defendant No.1. The Respondent No.2/Defendant No.2 relied upon the sale deed dated 19th January 1918 executed in his favour by the Respondent no.1/Defendant No.1. It was an admitted position that the Appellant-Plaintiff was in possession and that the Respondent No.2 knew about the possession of the Appellant and before taking the property from the Respondent No.1, he did not make any enquiry to ascertain the circumstances in which the Appellant was in possession. In the context of the said factual controversy, the question was whether the

Appellant-Plaintiff could have enforced specific performance against the Respondent No.2-Defendant No.2. The Division Bench held that the Respondent No.2-Defendant No.2 was deemed to have constructive notice of agreement of sale in favour of the Appellant-Plaintiff and therefore the specific performance of the said Agreement can be enforced against the Respondent No.2-Defendant No.2. So far as in the present case is concerned, the Appellant/Plaintiff is not seeking specific performance of agreement at Exh.72 as against the Respondent No.1.

19. To substantiate the aforesaid contention Shri Kumbhakoni also relied upon the Judgment of learned Single Judge of this Court reported in A.I.R. 1958 Bombay page No.194 (Chand Mohammad Vs. Murtuzakhan Mohammad Mustafakhan). Before I refer to the law laid down by the learned Single Judge, it will be necessary to refer to the facts of the case before the learned Single Judge. The property in dispute was originally of the ownership of one Hajrabi and her son Shaikh Hussain. The said owners agreed to sale the property on 3rd September 1945 in favour of the Plaintiff. The said Hajrabi and Shaikh Hussain sold the said property by a registered conveyance on 5th September 1945 in favour of the first Defendant. On 6th December 1945 a sale deed was executed by said Hajrabi and Shaikh Hussain in favour of the Plaintiff in respect of the said property. The Plaintiff filed a suit for declaration that he has become owner of the suit property and

that the first Defendant had acquired no title to the property under the sale deed dated 5th September 1945 the sale deed having been taken by the first Defendant with due notice of agreement dated 3rd September 1945 executed in favour of the Plaintiff. In the said suit plea of the first Defendant was he was a bonafide purchaser of the property for valuable consideration. The Trial court decreed the suit by granting declaration in favour of the Plaintiff and the Appellate Court confirmed the said Decree. In the Second Appeal the contention before the learned Single Judge was that the proper remedy available for the Plaintiff was to file a suit for specific performance on the basis of agreement dated 3rd September 1945.

20. The learned Single Judge found that the Plaintiff was entitled to benefit and obligation arising out of the agreement dated 3rd September 1945 which became annexed to the property by virtue of Section 40 of the said Act of 1882 and that the Plaintiff was entitled to enforce the right under the Agreement against the First Defendant who was a transferee with notice thereof. The learned Single Judge found that what was recorded by the Courts below was that the first Defendant was transferee with the notice of the benefit of obligation in favour of the Plaintiff. The learned Single Judge held that the Plaintiff was entitled to enforce rights under the agreement for sale by virtue of Paragraph No.2 Section 40 of the said Act of 1882 against the first

Defendant and there was no reason to suppose that the right can be enforced only by a suit for specific performance against the original owner. The learned Single Judge held that the Plaintiff was absolved from the necessicity of filing a suit for specific performance as second and third Defendants had already executed the conveyance in favour of the Appellant. The learned Single Judge therefore held that if under a Decree for specific performance, the title of the first Defendant was liable to be defeated, it was difficult to understand why the title cannot be defeated by sale deed which is executed by the said Hajrabi and Shaikh Hussain in favour of the Plaintiff in recognition of the obligation under the earlier agreement. After referring to the Judgment reported in A.I.R.1954 S.C.page No.75 (Durga Prasad Vs. Deep Chand) the learned Single Judge held that in the case before him, the benefit of obligation arising out of the contract and annexed to the owner is merged in the sale deed in favour of the Plaintiff and that he was seeking to enforce his right against the person who has purchased the property with the notice of contract. The learned Judge, therefore, held that the Plaintiff was entitled to declaration that he was the owner of the property and the first Defendant had acquired no right on the basis of the Sale Deed dated 5th September 1945.

21. Shri Kumbhakoni submitted that the ratio of the said Judgment in case of Chand Mohammad (supra) was squarely applicable to the facts of the present case.

22. Shri Kumbhakoni relied upon the judgment of the Apex Court reported in the case of Durga Prasad (supra) and submitted that even if the Plaintiff was to file the suit for specific performance on the basis of the agreement at Exh.72 the Court could have passed a Decree directing the Respondent No.1 to join the Respondent No.2 in execution of the conveyance in favour of the Appellant. He also relied upon another judgment of the Apex Court reported in A.I.R. 1971 S.C.page No.1238 (Ramesh Chandra Chandiok Vs. Chuni Lal Sabharwal) in which similar view has been taken by the Apex Court. He relied upon the another Judgment reported in [2001 (3) Mh.L.J. page No.730 (Dilip Bastimal Jain Vs. Baban Bhanudas Kamble and others) wherein the learned Single Judge of this Court has relied upon the Judgment of the Apex Court in the case of Durga Prasad (supra) and held that in a suit for specific performance it was not necessary to seek any specific declaration against the transferees who were impleaded as parties. He made a reference to the Judgment of Delhi High Court reported in A.I.R. 1979 Delhi P.129 (Ramji Lal Vs. Ram Pershad and another).

23. The position of law which emerges is that if the Respondent No.1 had a notice, actual or constructive, of the Agreement at Exh.72 then the Appellant was entitled to declaration of ownership in respect of one half share of the Respondent No.2 in the said land on the basis of the sale

deed dated 8th September 1973 as obligation of the Respondent No.2 under the agreement at Exh.72 had merged in the sale deed executed in favour of the Appellant. However, if the Respondent No.1 had no notice, whether constructive or actual, in respect of the agreement at Exh.72, the Appellant will not be entitled to the declaration.

24. The agreement at Exh.72 is not a registered document. It is not the case of the Appellant that the Respondent No.1 had actual knowledge of the agreement at Exh.72. Shri Kumbhakoni relied upon the judgment of Division Bench of this Court in case of Faki Ibrahim (supra) to contend that as the Appellant was in possession and as the Respondent No.1 has not made enquiries why the Appellant was in possession, the Respondent No.1 must be taken to have constructive notice of the equitable right in favour of the Appellant. It is to be borne in mind here that even according to the case of the Appellant he was not put in possession of the said land under the Agreement at exh.72 but he was put in possession under the document dated 13th June 1963 (Exh.68). The Respondent No.1 who stepped into the witness box stated that he was not aware about the agreement at Exh.72. In paragraph No.10 of his cross examination the Respondent No.1 admitted that he was intimated by the Respondent Nos.2 and 3 about the transaction which took place between them and the Appellant. When the Respondent No.1 stated this the reference is obviously made to the Agreement of Tenancy at Exh.68. When

the Respondent No.1 was given a specific suggestion regarding the agreement for sale executed by the Respondent No.2 in favour of the Respondent No.1, he denied the knowledge about the same. Thus, the Respondent Nos.2 and 3 had made the Respondent No.1 aware about the earlier transaction at Exh.68 with the Appellant and that is an obvious explanation to the failure of the Respondent No.1 to make enquiry with the Appellant about the possession of the Appellant. When the Respondent No.1 was aware of the fact that the Appellant was claiming to be in possession on the basis of transaction of lease made in the year 1968, it was not necessary for him to make any further inquiry with the Appellant. The Appellant was not put in possession of the said land on the basis of Agreement for sale dated 17th March 1971 and was claiming to be in possession as a tenant under the document dated 13th June 1963. After the Respondent No.1 was made aware of the transaction made on 13th June 1963, it was not expected of him to make further enquiry with the Appellant. Considering this factual position, the Respondent No.1 cannot be held to have either actual or a constructive knowledge of the Agreement at Exh.72. Thus, the Respondent No.1 appears to be a bonafide purchaser without knowledge of the agreement at Exh.72. In the circumstances, the Appellant is not entitled to declaration of ownership against the Respondent No.1 on the basis of sale deed executed on 8th September 1973. Hence the Agreement at Exh.72 cannot be held as binding on the Respondent No.1.

25. The second question to be decided is whether the document at Exh.68 is a compulsorily registrable document or not. For that purpose it is necessary to refer to the said document dated 13th June 1963. The document has been executed by the Respondent No.3 for himself and on behalf of the Respondent No.2 who was a minor. The said document provides that the Appellant will repair the old dilapidated house to enable him to use it for factory purposes. The document provides that from the date on which the repairs are completed, the Appellant will be permitted to use the said factory and the Appellant will pay a sum of Rs.60/-p.a. The said document itself provides that a sum of Rs.60/- p.a. will be the rent on account of royalty. The document provides that a sum of Rs.60/- p.a. will be payable from the date on which the repair work is completed. The case made out by the Appellant in the plaint is that the agreement at Exh.68 came into force from the date on which construction of the factory was completed i.e. 18th March 1964. No specific case is made out in the plaint that the document at Exh.68 is an Agreement to create tenancy in future. On the contrary, the plaint proceeds on the footings that by the said document itself the tenancy was created. On plain reading of the document, the same appears to be in respect of the structure and not in respect of the land. The document at Exh.68 purports to create a lease for a period of 10 years and therefore as per Section 107 of the said Act of 1882 the

lease of immovable property for in term exceeding one year or reserving yearly rent can be made only by a registered document. For this reason, the document was a compulsorily registrable document. Therefore, the Courts below were right when after considering the provisions of the said Act of 1908 and the said Act of 1882, it was held that the Agreement was a compulsorily registrable document. The submission is made that in absence of registration, tenancy shall be deemed to be a month to month tenancy. The reliance is also placed on rent receipts for submitting that admittedly there is a landlord-tenant relationship between the Respondent Nos.2 and 3 and the Appellant. It is to be noted here that the Appellant in his pleadings has not claimed tenancy on the basis of the subsequent rent receipts. His claim is based only on the document at Exh.68. Moreover, it is not his case in the plaint that the tenancy was a month to month tenancy. The rent receipts on which reliance is placed show that yearly rent has been paid. Therefore, in absence of any specific plea in the plaint or in the evidence, the case of the month to month tenancy cannot be accepted. Therefore, there is no substance in the second contention raised by the learned Counsel for the Appellant.

26. The Appellant sought relief of declaration and injunction on the basis of two documents. The first is agreement of tenancy at Exh.68 and secondly the sale deed dated 8th September 1973 at Exh.42. In so far as Exh.68 is

concerned, it is not admissible in evidence for want of registration. So far as the sale deed is concerned, as held earlier the Respondent No.1 has purchased entire said land by sale deed dated 15th December 1971 and the Respondent No.1 is a bonafide purchaser having no notice of agreement dated 17th March 1971 at Exh.72. Once the sale deed dated 15th December 1971 is held to be valid it follows that the Respondent No.2 had no subsisting right, title or interest to sell his one half share in favour of the Appellant in the year 1973.

27. In the circumstances, there is no infirmity in the view taken by the Appellate Court. Accordingly, the Second Appeal is dismissed with no order as to costs. Certified copy is expedited.

. Parties to act upon an ordinary copy of the order duly authenticated.

JUDGE